◦ THE HON'BLE SRI JUSTICE BILAL NAZKI

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AND

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THE HON'BLE SRI JUSTICE P.S. NARAYANA

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+ W.P. Nos. 21878 of 1999, 19637/2000, 22937/2000, 23056/2000, 23149/2000, 19879/2002, 20787/2001 & 24601/2001

% Dated 5.11.2004

M/s. Chatla Narasaiah Ramaiah, Rep. by its Partner, Mr. C. Srisailam **and others**

…. Petitioners

Vs.

$ The State Of A.P Rep by its Principal Secretary (Revenue) Secretariat Building, Hyderabad and others

….Respondents

! Counsel for petitioners: Mr. P. Srinivas Reddy

^Counsel for Respondents: G.P. for Commercial Tax,

<GIST:

> HEAD NOTE:

? Cases referred

1. 63 STC 1

2. 18 STJ 139

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE FIFTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

and
THE HON'BLE MR JUSTICE P.S.NARAYANA

W.P. Nos. 21878 of 1999, 19637/2000, 22937/2000, 23056/2000, 23149/2000, 19879/2002, 20787/2001 & 24601/2001.

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WRIT PETITION NO : 21878 of 1999

Between:

M/s. Chatla Narasaiah Ramaiah, Rep. by its Partner, Mr. C. Srisailam
H.No.4-5-1/D1, Nizam Sagar Road, Kamareddy,
Nizamabad Dist.

..... PETITIONER

AND

1 The State Of A.P Rep by its Principal Secretary (Revenue)
Secretariat Building, Hyderabad.
2 M/s. AP Forest Development Corporation Limited, Rep. by its Managing Director .A.C.Guards, Hyderabad
3 The Commercial Tax Officer, Assessing Authority of the 2nd respondent Aghapura, Hyderabad

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to May be pleased to issue a Writ of Mandamus or any other Writ or Order or direction declaring the G.O.183, dated 6-3-1999 issued by the first respondent as unreasonable, discriminatory, arbitrary and hence unconstitutional and set aside the same and consequently declare that the petitioner is entitled to purchase beedi leaves as raw materials against form 'G' under Section 5-B of the Act and pass such other order or orders.

Counsel for the Petitioner: MR.P.SRINIVAS REDDY

Counsel for respondent No.1: None appeared.

Counsel for the Respondents 2 & 3.: GP FOR COMMERCIAL TAX

WRIT PETITION NO : 19637 of 2000

Between:

M/s. Desai Brothers Limited, Kamareddy, Nizamabad District, rep. by its Manager, Me. Kanubhai B.Patel.

..... PETITIONER

AND

1 The State of Andhra Pradesh, rep. its Principal Secretary (Revenue) secretariate buildings, Hyderabad.
2 M/s. AP Forest Development Corporation Limited, A.C.Guards, Hyderabad, rep. by its Managing Director.
3 The Commercial Tax Officer, Agapur Circle, Hyderabad, Assessing Authority of the 2nd Respondent. .... Respondents

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to to issue a Writ of Mandamus or any other appropriate Writ or Order or direction declaring the G.O.58, dated 31-1-2000 issued by the 1st Respondent as unreasonable, discriminatory, arbitrary and hence unconstitutional and get aside the same consequently declare that the Petitioner is entitled to purchase beedi leaves as raw materials against form 'G' under section 5-B of the Act

Counsel for the Petitioner: MR.P.SRINIVASA REDDY

Counsel for the Respondent No.1: None appeared.

Counsel for the Respondents 2 & 3: MR.P.SREE RAMULU NAIDU

WRIT PETITION NO : 22937 of 2000

Between:

M/s. Chatla Narsaiah Ramaiah, Beedi Manufactures, Nizamnagar Road, Kamareddy, Nizamabad District, rep. by its its Managing Partner, Mr. Chatla Srisailam.

..... PETITIONER

AND

1 The State of Andhra Pradesh, rep. by its Principal Secretary (Revenue) Secretariat buildings, Hyderabad
3 The Commercial Tax Officer, Agapura Circle, Hyderabad

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the

circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Mandamus or any other appropriate Writ or Order or direction declaring the Notification-II of G.O.739, dated 17-10-2000 issued by the 1st Respondent as unreasonable, discriminatory arbitrary and hence unconstitutional and set aside the same and consequently declare that the Petitioner is entitled to purchase beedi leaves as raw materials against from 'G' under Section 5-B of the Act

Counsel for the Petitioner: MR.P.SRINIVASA REDDY

Counsel for the Respondent No.1: None apeared

Counsel for the Respondent No.2:SPL. GP FOR TAXES

WRIT PETITION NO : 23056 of 2000

Between:

M/s. Hiralal Prabhuram & Company, Beedi Manufacturers, 10-7-620, Gajulpet, Nizamabad, rep. by its Constituted Attorney, Mr. Chetan Upadhyay.

..... PETITIONER

AND

1 The State of Andhra Pradesh,rep. by its Principal Secretary (Revenue) Secretariat buildings, Hyderabad.

2 M/s. AP Forest Development Corporation Limited, A.C.Guards, Hyderabad, rep. by its Managing Director.

3 The Commercial Tax Officer, Agapur Circle, Hyderabad,

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Mandamus or any other appropriate Writ or Order or direction declaring the Notification-II of G.O.739, dated 17-10-2000 issued by the 1st Respondent as unreasonable, discriminatory arbitrary and hence unconstitutional and set a side the same and consequently declare that the Petitioner is entitled to purchase beedi leaves as raw materials against form G under section 5-B of the Act and pass such other order.

Counsel for the Petitioner: MR.P.SRINIVASA REDDY

Counsel for the Respondent No.1: None appeared.

Counsel for the Respondents 2 & 3: MR.P.SREE RAMULU NAIDU

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WRIT PETITION NO : 23149 of 2000

Between:

M/s. Vani Nava Shakthi Beedi Company Beedi Manufacturers,
Vidya Nagar Colony, Kamareddy, Nizamabad Dist.
rep. by its Managing Partner Mr.Chatla Srisailam

..... PETITIONER

AND

1 The State of Andhra Pradesh, rep. by its Principal Secretary (Revenue)
Secretariat Buildings, Hyderabad
2 M/s. AP Forest Development Corporation Limited,
A.C.Guards, Hyderabad,
rep. by its Managing Director
3 The Commercial Tax Officer,
Agapura Circle, Hyderabad

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Mandamus or any other appropriate Writ or Order or direction declaring the Notification-II of G.O.739, dated 17-10-2000 issued by the 1st Respondent as unreasonable, discriminatory arbitrary and hence unconstitutional and set aside the same and consequently declare that the Petitioner is entitled to purchase beedi leaves as raw materials against form 'G' under Section 5-B of the Act

Counsel for the Petitioner: MR.P.SRINIVASA REDDY

Counsel for Respondent No.1: None appeared

Counsel for the Respondents 2 & 3.: MR.P.SREE RAMULU NAIDU

WRIT PETITION NO : 19879 of 2002

Between:

M/s. Desai Brothers Limited, Kamareddy, Nizamabad District
rep. by its Manager, Mr. Kanubhai B.Patel

..... PETITIONER

AND

1 The State of Andhra Pradesh. rep. by its Principal Secretary (Revenue), Secretariat Buildings, Hyderabad
2 M/s. AP Forest Development Corporation Limited, A.C. Guards, Hyderabad, rep. by its Managing Director.
3 The Commercial Tax Officer, Assessing authority of 2nd Respondent Aghapura, Hyderabad,

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Mandamus or any other Writ or order or direction declaring the G.O.496 dated 17.7.2001 issued by the first respondent as unreasonable, discriminatory, arbitrary and unconstitutional and set aside the same and consequently declare that the Petitioner is entered to purchase beedi leaves as raw materials against form 'G' under Section 5-B of the Andhra Pradesh General Sales Tax Act for the beedi leaf season 2002.

Counsel for the Petitioner: MR.P.SRINIVASA REDDY

Counsel for the respondent No.1: None appeared.

Counsel for the Respondents 2 & 3: SPL GP FOR TAXES

WRIT PETITION NO : 20787 of 2001

Between:

M/s. Desai Brothers Limited, Kamareddy, Nizamabad District rep. by its Manager, Mr. Kanubhai B.Patel.

..... PETITIONER

AND

1 The State of Andhra Pradesh, rep. by its Principal Secretary (Revenue) Secretariat Buildings, Hyderabad.
2 M/s. AP Forest Development Corporation Limited, A.C.Guards, Hyderabad, rep. by its
Managing Director.
3 The Commercial Tax Office, Assessing authority of 2nd Respondent, Aghapura, Hyderabad.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Mandamus or any other writ or order or direction declaring the G.O.496 dated: 17.7.2001 issued by the first respondent as unreasonable, discriminatory, arbitrary and unconstitutional and set aside the same and consequently declare that the Petitioner is entitled to purchase beedi leaves as raw materials against form 'G' under Section 5-B of the A.P.General Sales Tax Act.

Counsel for the Petitioner: MR.P.SRINIVASA REDDY

Counsel for the respondent No.1: None appeared

Counsel for the Respondent Nos.2 & 3: SPL GP FOR TAXES

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WRIT PETITION NO : 24601 of 2001

Between:

M/s. Hiralal Parbhuram & Company, Gajulpet, Nizamabad, rep. by its Managing Partner, Mr. Hitendra Upadhyay.

..... PETITIONER

AND

1 The State of Andhra Pradesh, rep. by its Principal Secretary (Revenue), Secretariat Buildings, Hyderabad.
2 M/s. AP Forest Development Corporation Limited, A.C.Guards, Hyderabad, rep. by its Managing Director
3 The Commercial Tax Officer, Assessing authority of 2nd Respondent Aghapura, Hyderabad.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Mandamus or any other writ or order or direction declaring the G.O.496, dated 17-07-2001 issued by the first respondent as as unreasonable, discriminatory, arbitrary and unconstitutional and set the same and consequently declare that the Petitioner is entitled to purchase beedi leaves as law materials against form 'G' under Section 5-B of the A.P.General Sales Tax Act.

Counsel for the Petitioner: MR.P.SRINIVASA REDDY

Counsel for the respondent No.1: None appeared.

Counsel for the Respondents 2 & 3: SPL GP FOR TAXES

The Court made the following :

HON'BLE SRI JUSTICE BILAL NAZKI

AND

HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.Nos. 21878/1999, 19637/2000, 22937/2000, 23056/2000, 23149/2000, 19879/2002, 20787/2001 & 24601/2001.

COMMON JUDGMENT: (Per Hon'ble Sri Justice Bilal Nazki)

W.P.No. 21878 of 1999:

In this writ petition G.O.Ms.No. 183, Revenue (CT-II), dt. 6.3.1999 has been challenged on the ground that it is unreasonable, discriminatory and arbitrary.

The petitioner was a registered dealer and was engaged in the business of manufacture and sale of beedies at Kamareddy. He acquired rights of successful bidder in the auction conducted by 2nd respondent for the year 1999 and entered into fresh agreement with the 2nd respondent for procurement of beedi leaves from forest areas in Andhra Pradesh. Prior to 1.8.1996 the beedi leaves were taxable at last purchase point under entry No. 18 of the II schedule. By Act 27/96 the beedi leaves were shifted to entry No. 196 of the I

Schedule with effect from 1.8.1996. According to the petitioner, in terms of the entry No. 196 of the I schedule, on procurement of beedi leaves by him, they would be at first sale point in the assessment of the 2nd respondent and in terms of Section 5-B of the Andhra Pradesh General Sales Tax Act (for short "the Act"), levy of concessional rate of tax of 4% would be attracted when the goods were sold for use in manufacture or processing of goods. The petitioner contends that Rule 30-A and 30-B of the Andhra Pradesh General Sales Tax Rules govern the procedure for registration of manufacturers, issuance of 'G' forms and other incidental matters. According to the petitioner, in terms of Section 5-B of the Act, he being a manufacturer of beedies can buy beedi leaves, a raw material and use them in manufacture of beedies and under Section 5-B (1) (a) of the Act he can issue 'G' forms to the 2nd respondent to enable them to charge sales tax at 4%. There were some earlier litigation also when the 2nd respondent was directed by the Commissioner of Commercial Taxes not to accept 'G' forms for beedi leaves and the beedi leaves be charged at 9%. The High Court had allowed the writ petitions upholding the beedi manufacturers' rights to issue 'G' forms issued by buyers. This judgment was reported in *Sable Weghire & Company Ltd. Vs. A.P. Forest Development Corporation Ltd. and another* (109 STC 656). After this judgment, the Government passed G.O.Ms.No. 183, Revenue (CT-II), dt. 6.3.1999 which reads as under,

> "In exercise of the powers conferred by clause (b) of sub-section (1) of Section 5-B of the Andhra Pradesh General Sales Tax Act, 1957 (A.P. Act VI of 1957) and in supercession of the orders issued I Notification XXV to G.O.ms.No. 625, Revenue (CT.II) Department, dated 31st July, 1996, the Governor of Andhra Pradesh hereby directs that the following goods are not eligible for concessional rate of tax;
>
> a. Petrol;
>
> b. Diesel oil;

c. All kinds of gases whether in compressed, liquefied or solidified or in any other form; and

d. Beedi leaves."

This G.O. has been challenged in this writ petition. Earlier to this G.O., G.O.Ms.No. 625 was issued on 31.7.1996 and by this G.O. it was contemplated that the tax shall be levied and collected at a concessional rate of four paise in the rupee on the turnover of sales by any dealer of any goods, other than the goods i.e., (a) Petrol, (b) Diesel and (c) All types of Gases mentioned in Entry 118 of First Schedule. So what was in effect done by G.O.Ms.No. 183 was that it added beedi leaves to the negative list which could not avail the concessional rate.

The argument made at the bar for striking down the G.O.Ms.No. 183 was that the Government had no power to issue a notification making the goods of raw material ineligible for getting the benefit of concessional rate of tax because of the mandate under Section 5-B (1) (b) of the Act. It is submitted that Section 5-B (1) (b) of the Act is meant only to notify such other goods apart from those falling under clause (a) as eligible for concessional rate under Section 5-B of the Act. It is contended by the learned counsel for the petitioner that Section 5-B (1) (b) of the Act cannot be understood to give any power to the Government to notify the goods which are otherwise eligible for concessional rate of tax under clause (a) as ineligible for the benefit of concessional tax. It is contended that the transaction in raw material gives the benefit to the dealer in terms of Section 5-B (1) (a) of the Act itself and therefore it could not be taken away by exercise of purported power under Section 5-B (1) (b) of the Act. Section 5-B of the Act lays down,

"5-B- Levy of concessional tax in respect of certain goods:-

1. Notwithstanding anything contained in this Act, every dealer shall pay tax at the rate of 4 paise in the

rupee or at the rates specified in Section 5 in respect of goods other than declared goods, or under Section 6 in respect of declared goods, whichever is lower on the turnover relating to such sale in the following circumstances, namely,-

a. When a dealer sells any goods to another dealer for use by the latter as raw material, component part, sub-assembly part, intermediate part and packing material in the manufacture of goods inside the State;

b. When a dealer sells to another dealer any goods (other than those falling under clause (a) which are notified by the Government from time to time for use by the latter in the manufacture or processing of the goods inside the State. The Government may also notify the goods which are not eligible for concessional rate of tax under this section;

Provided that the provisions of this section shall not apply to any sale unless the dealer selling the goods furnished to the assessing authority in the prescribed manner a declaration duly filled in and signed by the dealer to whom the goods are sold containing the prescribed particulars in the prescribed form obtained from the prescribed authority on payment of prescribed fee."

The learned counsel for the petitioner submits that Section 5-B of the Act makes it clear that whatever goods which are eligible for concessional rate of tax under Section 5-B (1) (a) of the Act can never be brought in a negative list under the purported powers given under Section 5-B (1) (b) of the Act. Secondly, it is contended that all those dealers who avail the benefit under Section 5-B (1) (a) of the

Act other than the beedi leave dealers continued to have the benefit of concessional rate of tax and therefore the impugned G.O. is discriminatory.

Coming to the first argument, Section 5-B (1) of the Act only lays down that notwithstanding anything contained in the Act, every dealer shall pay tax at the rate of 4 paise in the rupee or at the rates specified in Section 5 in respect of goods other than declared goods, or under Section 6 in respect of declared goods, whichever is lower on the turnover relating to such sale in only two circumstances. Those two circumstances are under clauses (a) and (b). The first category is when a dealer sells any goods to another dealer for use by the latter as raw material…….. and the second category is when a dealer sells to another dealer any goods which do not fall under clause (a), but which are notified by the Government from time to time for use by the latter in the manufacture or processing of the goods inside the State. The Government is also empowered to notify the goods which are not eligible for concessional rate of tax under this section. So in a way the clause (b) controls clause (a) because if the meaning suggested by the learned counsel for the petitioner is assigned to clause (a), then the words, “The Government may also notify the goods which are not eligible for concessional rate of tax under this section”, would become redundant and it is cardinal principle of interpretation that each sentence and each word of a statute should be given a meaning. Section 5-B (1), if read as a whole, would only mean that the concessional rates would be available when a dealer sells any goods to another dealer for use by the latter as raw material, component part, sub-assembly part, intermediate part and packing material in the manufacture of goods inside the State. It also means that the concessional rates would apply to goods which are notified by the Government other than those falling under clause (a). It further would mean that the concessional rate would not be available to the goods notified by the Government as not eligible for concessional rates. Whether the goods are used as raw material or component part becomes

irrelevant. For these reasons, we do not find any merit in this writ petition.

The learned counsel for the respondents has relied on judgments reported in *Vrajlal Manilal & Co., and another Vs. State of Madhya Pradesh and another* and *Roxy Roller Flour Pvt. Limited & others Vs. Government of Andhra Pradesh & others* . The judgment in *Vrajlal Manilal & Co., and another Vs. State of Madhya Pradesh and another* (1st supra) is not relevant for the purpose of the present controversy because in the case before the Supreme Court the proviso itself was amended which had been challenged and the amendment was upheld by the Supreme Court. However, this judgment would be relevant for meeting the argument of the learned counsel for the petitioner with regard to the discrimination. The controversy was same before the Supreme Court which is before us, but what is sought to be achieved by the Government in the present case by issuing the impugned G.O. was sought to be achieved by the Government of Madhya Pradesh by amending the relevant section of the Sales Tax Act. The Supreme Court held that it was not discriminatory.

In *Roxy Roller Flour Pvt. Limited & others Vs. Government of Andhra Pradesh & others* (2nd supra) it was held that the power to grant exemption includes the power to rescind. It was also held that in matters involving exercise of legislative functions the question of principles of natural justice would not arise.

For the reasons given hereinabove, the writ petition is devoid of merit and is accordingly dismissed. No costs.

W.P.Nos.19637/2000, 22937/2000, 23056/2000, 23149/2000, 19879/2002, 20787/2001 & 24601/2001.

It is submitted that these writ petitions are similar to W.P.No. 21878 of 1999. Therefore we direct that the judgment in W.P.No. 21878 of 1999 shall also govern these writ petitions which are accordingly dismissed. No costs.

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BNJ.

Dt. 5.11.2004

KR

_____ PSNJ.

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To

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2 M/s. AP Forest Development Corporation Limited, Rep. by its Managing Director .A.C.Guards, Hyderabad
3 The Commercial Tax Officer, Assessing Authority of the 2nd respondent Aghapura, Hyderabad

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